

**IN THE DISTRICT COURT OF THE UNITED STATES  
FOR THE MIDDLE DISTRICT OF ALABAMA  
NORTHERN DIVISION**

<b>UNITED STATES OF AMERICA</b>	)	
	)	
v.	)	<b>CR. NO. <u>2:06cr94-WKW</u></b>
	)	
<b>WILLIE DAVIS DEWHART</b>	)	

**RESPONSE TO DEFENDANT’S MOTION TO ENFORCE COURT ORDER  
OF SEPTEMBER 5, 2006 (DOC. 27) AND OCTOBER 5, 2006 (DOC. 29)**

Comes now the United States of America, by and through Leura G. Canary, United States Attorney for the Middle District of Alabama, and submits the following response to Defendant’s Motion to Enforce Court Order of September 5, 2006 (Doc. 27) and October 5, 2006 (Doc. 29).

**I. Background.**

On April 5, 2006, a grand jury returned a one-count Indictment charging Willie Davis Dewhart (hereinafter “Dewhart”) with possession with intent to distribute cocaine. (Doc. 1). On April 12, 2006, Dewhart was arraigned before United States Magistrate Judge Susan Russ Walker. The first pretrial conference was initially scheduled on July 17, 2006.<sup>1</sup> Dewhart filed a motion to continue the pretrial conference. (Doc. 13). On April 27, 2006, the pretrial conference was re-scheduled to August 18, 2006. (Doc. 12). Also on April 27, 2006, defense counsel filed a motion for a psychiatric examination of Dewhart. (Doc. 14).

On May 4, 2006, United States Magistrate Judge Charles S. Coody issued an order that the United States Marshal remove the defendant to the custody of the warden of the appropriate institution for the purpose of a psychiatric examination. (Doc. 15). The Court further ordered that a report be submitted to the court within 45 days from the date of the order. A subsequent

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<sup>1</sup> The Order on Arraignment incorporated an Order to Continue, which set a trial date for October 16, 2006. (Doc. 9).

order was issued on July 23, 2006, which extended the time for completion of the psychiatric examination to 45 days from the date of the defendant's arrival. (Doc. 17). On August 22, 2006, the psychiatric report was received which concluded that the defendant was not competent to go forward with a trial (Doc. 21). A competency hearing was held on September 5, 2006, (Doc. 28), and a Report and Recommendation was issued directing that the (1) defendant be committed to the custody of the Attorney General for hospitalization and treatment; and (2) that during this period of treatment the defendant be evaluated to determine whether he was insane at the time of the commission of the offense. (Doc. 26). The Order adopting the Report and Recommendation was signed by United States District Judge William Keith Watkins on October 5, 2006. (Doc. 29).

On December 22, 2006, defense counsel filed a motion to enforce the September 5, 2006, Order that Dewhart be returned to the Bureau of Prisons for hospitalization and treatment. The Court's Order that the government submit a response was filed on January 29, 2007.

## **II. Government's Response.**

The undersigned government counsel has learned information that may have significantly impacted why Willie Davis Dewhart did not receive a prompt designation pursuant to the court's order of September 5, 2007.

The procedures to request and receive a designation for an inmate's psychiatric examination has undergone changes in the last three and a half months. Originally, a request for designation was made through the local Bureau of Prisons in Montgomery. The new procedure requires that the request be made to the Bureau of Prisons in Grand Prairie, Texas. As with most changes that involve computer technology combined with human interaction, implementing new changes and procedures can, and in this case did, become problematic.

The undersigned counsel has learned that Dewhart's designation was inadvertently not processed during this period of changes. The undersigned counsel has been assured that Willie Davis Dewhart's requested designation is being expedited, and he will be designated and transferred within the next 10 days.

The undersigned counsel respectfully submits that the Court's Order was in place and based upon the information provided above, the delay in designating Defendant Dewhart was inadvertent and not due to negligence or bad faith.

Respectfully submitted on this 31<sup>st</sup> day of January, 2007.

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**CERTIFICATE OF SERVICE**

I hereby certify that on January 31, 2007, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following: Susan G. James, Esq.

Respectfully submitted,

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